

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHAKTAT "SAL" MAREDIA, et al.,) 1:05-cv-00393-OWW-SMS

Plaintiffs,) ORDER PERMITTING THE FILING OF
) SUPPLEMENTAL BRIEFING NO LATER
) THAN AUGUST 13, 2007

PHILIP MORRIS USA INC., et al.,) INFORMATIONAL ORDER TO MOVING
al.,) COUNSEL

Defendants.)

PHILIP MORRIS USA INC.,

Counter-Claimant,)

• V.

SHAUKAT "SAL" MAREDIA,

Counter-Defendant.)

Defendant and Counter-claimant Philip Morris USA, Inc. is proceeding with a civil action in this Court. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302(c)(19) and 72-303. Counter-claimant has filed a motion for default judgment on the counterclaim.

An application for a default judgment qualifies as a motion pursuant to Fed. R. Civ. P. 7(b)(1) and Local Rule 1-101(19), and it should include briefs pursuant to Local Rule 78-230(b). Thus,

1 when seeking a default judgment, a plaintiff should provide the
2 Court with briefing containing citations to pertinent authority
3 showing that the Plaintiff is entitled to the relief requested
4 against the defaulting party. In the absence of such authority,
5 the Court may vacate the hearing on the motion pending
6 appropriate briefing, or the Court may be unable to recommend the
7 granting of the requested relief.

8 Generally, the scope of proceedings on an application for
9 default judgment involves a determination of damages, which
10 Plaintiff must prove by evidence, whether by affidavits where an
11 evidentiary hearing is waived, Davis v. Fendler, 650 F.2d 1154,
12 1161-62 (9th Cr. 1981), or by evidence, Fed. R. Civ. P. 55(b) (2).
13 Fed. R. Civ. P. 55(b) (2) provides in pertinent part:

14 If, in order to enable the court to enter judgment or to
15 carry it into effect, it is necessary to take
16 an account or to determine the amount of damages or
17 to establish the truth of any averment by evidence or
18 to make an investigation of any other matter, the court
may conduct such hearing or order such references as it
deems necessary and proper and shall accord a right of
trial by jury to the parties when and as required by
any statute of the United States.

19 The Court thus anticipates that a party seeking a default
20 judgment will provide the Court with evidence sufficient to prove
21 the amount of any damages sought. The party should also provide
22 the Court with legal authority in support of the measure of
23 damages sought to be applied by the party.

24 Here, the moving party has not provided the Court with legal
25 authority concerning the measure of damages sought by the moving
26 party. Further, although the moving party urges the Court to
27 shift the burden of proof, it does not appear that the party has
28 provided the Court with analogous case authority from California,

1 or any other jurisdiction, concerning the application of this
2 principle in the context of an application for a default
3 judgment.

4 Accordingly, it IS ORDERED that Defendant and Counter-
5 claimant MAY FILE supplemental briefing no later than August 13,
6 2007, addressing the measure of damages and providing pertinent
7 authority, including analogous case authority, concerning
8 shifting the burden of proof in the context of an application for
9 default judgment.

10 Further, in view of the form of the courtesy copy of the
11 pertinent moving papers submitted to the Court, counsel for
12 Defendant and Counterclaimant IS INFORMED that when a courtesy
13 copy is delivered to the Court, it should be appropriately
14 fastened and tabbed, and it should be clearly labeled "Courtesy
15 Copy."

16 IT IS SO ORDERED.

17 Dated: July 27, 2007

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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